

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

MICHAEL FIORITO,

Petitioner,

v.

**Civil Action No. 2:16-CV-36
(BAILEY)**

WARDEN SAAD,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation (“R & R”) of United States Magistrate Judge Michael John Aloï [Doc. 51]. Pursuant to this Court’s Local Rules, this action was referred to Magistrate Judge Aloï for submission of a proposed R&R. Magistrate Judge Aloï filed his R&R on July 10, 2017, wherein he recommends this Court deny and dismiss the petitioner’s petition for writ of habeas corpus without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court’s Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Aloï’s R&R were due within

fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Petitioner filed a Motion for Extension of Time to Respond to the R&R [Doc. 53] on July 24, 2017, which this Court granted by Order [Doc. 54] on July 25, 2017. Therein, this Court granted petitioner leave to file his Objections by August 25, 2017 [Id.]. Petitioner then filed an additional Motion for Extension of Time to File Response [Doc. 58], on August 21, 2017, which this Court denied by Order [Doc. 59] on the same day. Accordingly, petitioner's Objections were due by August 25, 2017 [Doc. 54], and he failed to timely file the same. Accordingly, this Court will review the R&R for clear error.

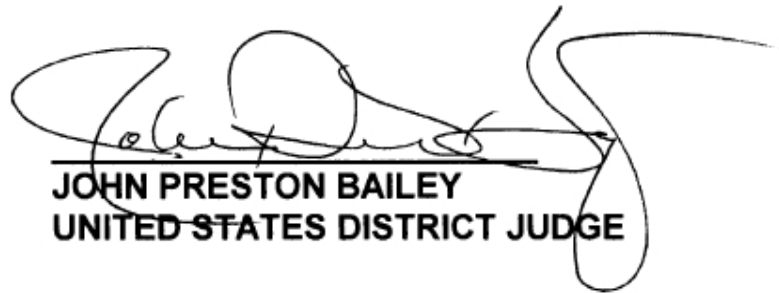
Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 51]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that respondent's **Motion for Summary Judgment [Doc. 22]** is **GRANTED**, petitioner's **Motion for Summary Judgment [Doc. 33]** is **DENIED**, and the petitioner's **Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1]** be **DENIED** and **DISMISSED WITHOUT PREJUDICE**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: August 28, 2017.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE